IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.2/2004

State of Goa,
represented by the Executive Engineer,
Works Division XV,
(National Highway),
P.W.D., Administrative Complex Building
Ponda – 403 401 ..... Appellants.

V/s.

M/s. R. S. Sawant & Brothers Engineers and Contractors, Datta Prasad Building,
Ponda. ..... Respondent.

Mr. S. R. Rivonkar, Government Advocate for the appellant.

Mr. C. Mascarenhas, Advocate for the respondent.

CORAM : R.S. MOHITE, J.

DATE : AUGUST 10, 2007.

ORAL JUDGMENT :

This is an appeal filed by the Executive Engineer, Works Division XV, Ponda seeking to quash and set aside the Judgment and Order dated 13.11.2003 passed by the Ist Additional Civil Judge, Senior Division, at Margao in Misc. Application No.34/89/I by which the learned Judge dismissed the objections raised by the present appellant and dismissed the application of the present appellant.

2. Brief facts of the case are as follows :

That on 17.12.1984, the work for construction of the approach road to Dharmapur Bridge on National Highway-17 was awarded to the respondent by executing a work agreement. Clause 25 of the said agreement was an arbitration clause. A dispute arose between the parties. The agreement provided that the work was to be completed by 4.12.1982. However, the work was not completed by the date as contemplated by the agreement and ultimately, the contract was rescinded on 18.10.1984.

Since the dispute arose between the parties, one Shri M.V.S. Borcar was ultimately appointed as an arbitrator on 9.4.1988 and he commenced the arbitration proceedings on 11.12.1988.

In the due course, the arbitrator passed his detailed and reasoned award on 18.10.2001, allowing the claims of the respondent.

In the year 2002, the Government filed a Misc. Application No.34/89/I in the Court of Civil Judge, Sr. Division, Margao, raising several objections to the award. The Civil Judge, Sr. Division, Margao dismissed the objections of the Government vide the impugned Judgment and Order dated 13.11.2003 and this is how this appeal is come to be filed on 20.2.2004.

3. On behalf of the appellant, it was contended that the impugned Judgment was passed without considering a question as to whether the

contract was validly rescinded, particularly as the time had been the essence of the contract. In connection with the proposition that time was the essence of the contract and the finding of the arbitrator on issue No.3 was not an error apparent on the face of the record, the First Additional Civil Judge, Sr. Division, Margao observed that the finding of the arbitrator on issue No.3 is not an error apparent on the face of the record. Before the arbitrator, the appellant while contending that the contract was not wrongfully rescinded, contended that the time had always been the essence of the contract. The original agreement dated 26.5.1981 stipulated that the work had to be completed by 4.12.1982 and in the agreement itself it was provided that the time was the essence of the contract. It was contended that though initially provisional extension of time was granted upto 31.3.1983 and thereafter another extension was granted upto 30.6.1984, in both these communications, it was clearly mentioned that the time continued to be the essence of the contract. That since the work still remained incomplete inspite of the two extensions, the contract was rescinded on 18.10.84. They placed strong reliance upon the Judgment of the Apex Court in the case of ***M/s. Hind Construction Contractors vs. State of Maharashtra,*** reported in AIR 1979 SC 720, in which the Apex Court concluded that the rescission of contract which permitted extensions on the part of the State Government without fixing any further time making time the essence and directing the contractor

to complete the work within such period, was clearly illegal and wrongful and, thereby, the State Govt. committed a breach of the contract with the result that the security deposit of the contractor could not be forfeited. It was strongly contended that in the present case, the lacunae indicated by the Apex Court did not exist as on two occasions time had been extended giving ample time and opportunity to the contractor to complete the work. That in both these communications of extension of time, it was clearly stipulated that time had been and continued to be an essence of the contract. It was contended that the finding of the arbitrator to the effect that while granting these two provisional extensions, it was merely stated that time shall continue to be the essence without expressly intimating to the contractor in clear terms that in case the work was not completed within the period, the contract would be rescinded forthwith, was an error in law apparent on the face of the record. Perusal of the record, however, indicates that there was in fact a third provisional extension granted by the appellant on 6.9.1984, extending the period for completion of the work upto to 30.11.84. If this extension is taken into account, the point sought to be raised on behalf of the appellant does not survive, because if the time was in fact extended upto 30.11.84, then the rescission of the contract effected on 18.10.84 was clearly premature. On behalf of the appellant, it was fairly conceded that there existed a third extension dated 6.9.1984 and the time for completing the work

was, in fact, extended upto 30.11.84. If this is accepted, then the error said to be apparent on the face of the record loses its bearing and force.

4. No other objection was pressed and there was no other error apparent on the face of the record brought to my notice at the stage of hearing of the appeal. In the circumstances, the appeal must fail and the same is dismissed.

R.S. MOHITE, J.

ssm.